

Amendment in Reply to Final Office Action of January 7, 2011

**REMARKS/ARGUMENTS**

This Amendment is being filed in response to the Final Office Action dated January 7, 2011. Reconsideration and allowance of the application in view of the amendments made above and the remarks to follow are respectfully requested.

Claims 17-30 are pending in the Application. Claims 27-29 were previously withdrawn. Claims 17 and 30 are independent claims.

In the Final Office Action, claims 17, 18, 20-22, 24, 25 and 30 are rejected under 35 U.S.C. §103(a) over U.S. Patent No. 5,660,170 to Rajan ("Rajan") in view of U.S. Patent No. 5,134,995 to Gruenke ("Gruenke"). Claims 19 and 26 are rejected under 35 U.S.C. §103(a) over Rajan in view of Gruenke and further in view of U.S. Patent No. 5,551,419 to Froechlich ("Froechlich"). Claim 23 is rejected under 35 U.S.C. §103(a) over Rajan in view of Gruenke and further in view of U.S. Patent No. 5,868,133 to DeVries ("DeVries"). These rejections are respectfully traversed. It is respectfully submitted that the claims are allowable for at least the following reasons.

In the Response to Arguments section at page 2, the Final Office Action states that Rajan at col. 7, lines 1-14 discloses increasing the inspiration pressure in response to monitoring the blood oxygen. It is respectfully submitted that this argument, however, ignores the recited "sudden increase in a breathing rate". The construction of claim 17, in which a monitor monitors breathing cycles "before a sudden increase in a breathing rate" and a controller increases a pressure of the flow of gas "after the sudden increase in the

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breathing rate" makes clear the importance of the "sudden increase" in terms of the present system. Increasing inspiration pressure when monitored blood oxygen is not ideal as in the referenced section of Rajan does not rise to the level of detecting the "sudden increase in a breathing rate". Nothing in Rajan suggests that the condition of the blood level not being ideal arises suddenly. Moreover, contrary to the position in the Final Office Action that "Rajan will allow the patient to commence breathing at the beginning of inhalation at an increased PIP", it is respectfully submitted that Rajan does not teach, disclose, or suggest "the pressure of the flow of gas delivered to the subject during the sudden increase in the breathing rate allows the subject to commence drawing in the gas immediately at the commencement of the inspiratory part of each breathing cycle", as for example recited in claim 17.

Furthermore, as argued in the response to the previous Office Action, it is undisputed that Rajan is silent about "an average intrinsic positive end-expiratory pressure over the monitored plurality of breathing cycles" as for example recited in claim 17. The Applicant maintains the argument that, knowledge of averaged respiratory gas flow does not suggest what increase is necessary in "a pressure of the flow of gas to the subject after the sudden increase in the breathing rate to the determined average intrinsic positive end-expiratory pressure, wherein the pressure of the flow of gas delivered to the subject during the sudden increase in the breathing rate allows the subject to commence drawing in the

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gas immediately at the commencement of the inspiratory part of each breathing cycle", as for example recited in claim 17.

Reliance on Gruenke for teaching that which is admitted missing from Rajan remains misplaced. As was previously argued Gruenke fails to teach or suggest monitoring characteristics "before a sudden increase in a breathing rate" and then based on these characteristics determining a characteristic output for after the sudden increase in the breathing rate, as for example recited in claim 17.

Thus, it is respectfully submitted that claims 17 and 30 are not anticipated or made obvious by the teachings of Rajan and Gruenke. For example, Rajan in view of Gruenke does not teach, disclose or suggest, amongst other patentable elements, (illustrative emphasis added) "a monitor configured to monitor characteristics associated with intrinsic pressure of breathing cycles of the subject before a sudden increase in a breathing rate and to store the monitored characteristics as a characteristic output; and a controller configured to determine an average intrinsic positive end-expiratory pressure over the monitored plurality of breathing cycles based on the characteristic output of the monitor, and control the gas flow generating system to increase a pressure of the flow of gas to the subject after the sudden increase in the breathing rate to the determined average intrinsic positive end-expiratory pressure, wherein the pressure of the flow of gas delivered to the subject during the sudden increase in the breathing rate allows the subject to commence

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drawing in the gas immediately at the commencement of the inspiratory part of each breathing cycle." as recited in claim 17 and as similarly recited in claim 30.

Froechlich and DeVries are introduced for allegedly showing elements of the dependent claims and as such, do nothing to cure the deficiencies in each of Rajan and Gruenke.

Based on the foregoing, the Applicant respectfully submits that the independent claims are patentable and notice to this effect is earnestly solicited. The dependent claims respectively depend from one of the independent claims and accordingly are allowable for at least this reason as well as for the separately patentable elements contained in each of the claims. Accordingly, separate consideration of each of the dependent claims is respectfully requested.

In addition, Applicant denies any statement, position or averment of the Examiner that is not specifically addressed by the foregoing argument and response. Any rejections and/or points of argument not addressed would appear to be moot in view of the presented remarks. However, the Applicant reserves the right to submit further arguments in support of the above stated position, should that become necessary. No arguments are waived and none of the Examiner's statements are conceded.

Patent

Serial No. 10/796,585

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Applicant has made a diligent and sincere effort to place this application in condition for immediate allowance and notice to this effect is earnestly solicited.

Respectfully submitted,

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